

PUBLIC LAW BOARD NO. 7008

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES' DIVISION Affiliated with
the Teamsters Rail Conference

and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

In accordance with the provisions of Rule 25, Section 3, of the CSXT/BMWED Agreement, dated June 1, 1999, the following will serve as our appeal of discipline assessed to CSXT employee E. L. Williams ID#****, as a result of the hearing held on November 21, 2007, at Wildwood, FL.

For the reasons stated herein and the objections raised prior to, and at the beginning of the hearing, it is respectfully requested that the charge letter dated October 15, 2007, and all matters related thereto, be removed from Mr. Williams personal file and he shall be made whole for all losses suffered as a result of the Carrier's actions.

OPINION OF BOARD:

Track Inspector E. L. Williams (hereinafter referred to as "Claimant" or Mr. Williams) was hired by Carrier on September 26, 2005. At all times relevant to this issue, the Claimant was assigned to Track Inspector position 6A11-069, headquartered at Wildwood, FL.

On September 5, 2007, the Claimant informed his supervisor, Roadmaster D. D. Simmons, Jr., that the State of Florida had suspended his driver's license. After discussing the issue, the Roadmaster allowed the Claimant to "remedy the situation" and take appropriate steps to revalidate

his driving privileges. On September 7, 2007, the Claimant provided his supervisor with a copy of a valid drivers license, reissued by the State of Florida.

Approximately three (3) weeks later, on September 25, 2007, Claimant Williams informed Roadmaster Simmons he received a warrant for his arrest. The following day, September 26, 2007, the Roadmaster received a telephone call from the Claimant's mother, who reported that the Claimant had been sentenced to 119 days in jail for driving without a driver's license, a "violation of his probation". As a result of his incarceration, the Claimant has not worked since September 25, 2007.

On October 15, 2007, Carrier informed Mr. Williams that:

"Your name had been officially removed from all BMWED rosters for failure to comply with Rule 26 -ABSENT WITHOUT PERMISSION. This rule states that (b) except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without notifying his supervisor or proper Carrier official will forfeit all seniority under this agreement. Your supervisor has indicated that on September 26, 2007 your mother called in to say that you would not be at work due to your being incarcerated in the Hernando County Jail for a period of 119 days. Further investigation reveals that this absence has not been granted by your supervisor. Based upon this information, you have forfeited your seniority under Rule 26".

In a second letter, also dated October 15, 2007, the Claimant was instructed to attend a formal investigation, to be held October 25, 2007 and charged with:

"...conduct unbecoming an employee of CSXT and operating a CSXT vehicle without a valid driver's license. It appears that you are in violation of but not limited to CSX Operating Rules- Rule A, GR-1, GR-2, GR-2A, GR-3 and CSX Safeway General Safety Rules-GS-1".

Following two (2) postponements at the request of the Organization, the investigation was held on November 21, 2007 with Claimant's representative in attendance, but without the Claimant present due to his incarceration. At the outset, the Organization protested the Carrier's decision to

proceed with the investigation with the Claimant in absentia. When Carrier refused to postpone the investigation for a third (3rd) time, BMW Vice Chairman Trawick left the hearing “in protest”. Subsequent to the Vice Chairman’s departure, the Carrier proceeded with the investigation, which was held to its conclusion.

Thereafter, by letter dated December 10, 2007, the Claimant was informed that:

“In Mr. Jim Howell’s letter of charges, dated October 15, 2007, and subsequent postponement letters, last dated November 6, 2007, your were instructed to attend a company investigation ‘to develop the facts and place your responsibility, if any, in connection with information I received on September 26, 2007 from your mother, that you were incarcerated in the Hernando County Jail for 119 days. It is alleged that you were arrested for driving with a suspended or revoked license. In connection with the above, you were charged with conduct unbecoming an employee of CSXT, operating a CSXT vehicle without a valid driver’s license and possible violation of but not limited to CSX Operating Rules, Rule A, GR1, GR2, GR2A, GR3 and CSX Safeway General Safety Rule GS1. After careful review of the transcript and exhibits of this investigation (copies attached) the facts support and confirm the charges brought against you. Due to the seriousness of the charge, discipline assessed in this case is your immediate dismissal from the service of CSX Transportation and forfeiture of all rights and seniority. Arrange to return all company material to Engineer Track J. Howell.....”.

In a December 20, 2007 appeal to Carrier’s decision, Vice Chairman Trawick argued:

“The hearing was conducted by the Carrier without the presence of the charged employee on November 21, 2007, and by copy the letter received by the Organization on December 13, 2007, Division Engineer R. Foster assessed the discipline of dismissal from the service of CSX Transportation and forfeiture of all rights and seniority. The Organization takes strong exception to the charges and discipline issued in this case is due to the fact that charges were leveled and discipline assessed without the presence of the charged employee’s attendance at the hearing. The Organization’s attempts to confer with the charged employee prior to the hearing were unsuccessful. The Organization on behalf of the charged employee did request postponement of this hearing prior to the hearing. First of all, Rule 25(d) of the Agreement has provisions to postpone a hearing for a reasonable amount of time at the request of the company, the employee, or the union’s representative. The request was made prior to the hearing, but was denied by Ms. Mattingly, who then proceed without Mr. William’s or his union representative, therefore denying the charged employee his due process rights. Mr. William’s was not provided an opportunity to

face his accuser and was not afforded an opportunity to hear testimony for and against him in connection with these charges. Mr. Williams was prejudged and disciplined and was not afforded an opportunity to defend himself against the charges leveled against him. Mr. Williams has worked for CSXT since 2005, and for this amount of time and service, the Organization feels that the discipline of immediate dismissal from service is harsh and forfeiture of all rights and seniority is very harsh. Due to the level of discipline assessed, was all the more reason to postpone this hearing to a later date as we requested. The Carrier simply charged Mr. Williams, held the investigation without his attendance, and assessed the discipline. In addition, we take strong exception to the fact that a postponement was verbally requested prior to the hearing. The proper objection was made on the record, at the beginning of the hearing, but the Carrier chose to proceed with the Investigation over our objections.....".

In its denial to the appeal, Carrier maintained that: 1) The Claimant was afforded a fair and impartial hearing in accordance with the Agreement; 2) There was sufficient evidence from the testimony and evidence presented at the hearing to support Carrier's position that the Claimant was guilty as charged; and, 3) Given the severity of the Claimant's offense(s), the discipline of dismissal was justified.

Further efforts between the Parties did not bring about resolution to this issue. Therefore, the dispute was placed before the Board for final and binding adjudication.

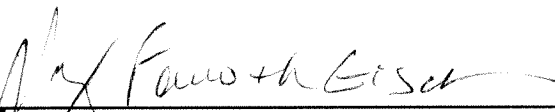
At the outset, the Organization asserted that Carrier's refusal to postpone the November 21, 2007 hearing constituted a fatal "procedural deficiency", premised upon the "requirement" that Carrier "permit all postponement requests". However, there is no language in the Agreement which supports such an assertion, nor do we find the Carrier's refusal to grant the Organization's third request for a postponement unreasonable in the circumstances.

Turning to the merits of the dispute, the Claimant was dismissed for violation of CSX Transportation Operating Rules A, GR1, GR2, GR2A, GR3 and CSX Safeway General Safety Rule GS1 in connection with alleged conduct unbecoming an employee and operating a CSX Vehicle

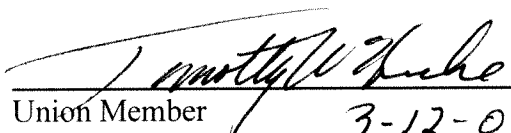
without a valid driver's license. Carrier maintained that there was sufficient evidence from the testimony and evidence presented at the hearing to support its position, and that the Claimant was guilty as charged. In the circumstances, we concur. Therefore, this claim must be denied.

AWARD

Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 3-12-09



Company Member 3/12/09